

1 Stephen M. Doniger (SBN 179314)
2 stephen@donigerlawfirm.com
3 Scott A. Burroughs (SBN 235718)
4 scott@donigerlawfirm.com
5 Trevor W. Barrett (SBN 287174)
6 tbarrett@donigerlawfirm.com
7 DONIGER / BURROUGHS
8 603 Rose Avenue
9 Venice, California 90291
10 Telephone: (310) 590-1820

11 Attorneys for Plaintiff

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 ROYAL PRINTEX, INC., a California
15 Corporation,

16 Plaintiff,

17 v.

18 US TOPS, INC., a Florida Corporation;
19 J & K CLOTHING, INC., a California
20 Corporation; CALWELL CORP., a
21 California Corporation; DIVA
22 APPAREL, INC.; a California
23 Corporation; 2 CUTE, INC., a New
24 York Corporation; and DOES 1 through
25 10,

26 Defendants.

Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR
CONTRIBUTORY COPYRIGHT
INFRINGEMENT

Jury Trial Demanded

27 Plaintiff ROYAL PRINTEX, INC., by and through its undersigned attorneys,
28 hereby prays to this honorable Court for relief as follows:

JURISDICTION AND VENUE

1
2 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101
3 *et seq.*

4 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
5 1338 (a) and (b).

6 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
7 1400(a) in that this is the judicial district in which a substantial part of the acts and
8 omissions giving rise to the claims occurred.

9 **PARTIES**

10 1. Plaintiff, ROYAL PRINTEX, INC (“ROYAL PRINTEX”) is a corporation
11 organized and existing under the laws of the State of California with its principal
12 place of business located in the Los Angeles County.

13 2. Plaintiff is informed and believes and thereon alleges that US TOPS, INC.
14 (“US TOPS”) is a corporation organized and existing under the laws of the state of
15 Florida, and is doing business in and with the state of California.

16 3. Plaintiff is informed and believes and thereon alleges that Defendant J & K
17 CLOTHING, INC. (“J & K”) is a corporation organized and existing under the laws
18 of the state of California, and is doing business in and with the state of California.

19 4. Plaintiff is informed and believes and thereon alleges that Defendant
20 CALWELL CORP. (“CALWELL”) is a corporation organized and existing under the
21 laws of the state of California, and is doing business in and with the state of
22 California.

23 5. Plaintiff is informed and believes and thereon alleges that Defendant DIVA
24 APPAREL, INC. (“DIVA”) is a corporation organized and existing under the laws of
25 the state of California, and is doing business in and with the state of California.

1 6. Plaintiff is informed and believes and thereon alleges that Defendant 2
2 CUTE, INC. ("2 CUTE") is a corporation organized and existing under the laws of
3 the state of New York, and is doing business in and with the state of California.

4 7. Defendants DOES 1 through 10, inclusive, are other parties not yet
5 identified who have infringed Plaintiff's copyrights, have contributed to the
6 infringement of Plaintiff's copyrights, or have engaged in one or more of the
7 wrongful practices alleged herein. The true names, whether corporate, individual or
8 otherwise, of Defendants 1 through 10, inclusive, are presently unknown to Plaintiff,
9 which therefore sues said Defendants by such fictitious names, and will seek leave to
10 amend this Complaint to show their true names and capacities when same have been
11 ascertained.

12 8. Plaintiff is informed and believes and thereon alleges that at all times
13 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
14 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
15 at all times acting within the scope of such agency, affiliation, alter-ego relationship
16 and/or employment; and actively participated in or subsequently ratified and
17 adopted, or both, each and all of the acts or conduct alleged, with full knowledge of
18 all the facts and circumstances, including, but not limited to, full knowledge of each
19 and every violation of Plaintiff's rights and the damages to Plaintiff proximately
20 caused thereby.

21 **CLAIM RELATED TO DESIGN R8821**

22 9. Prior to the conduct complained of herein, Plaintiff composed an original
23 two-dimensional artwork for purposes of textile printing, which is set forth
24 hereinbelow. It allocated this artwork Plaintiff's internal design number R8821
25 (hereinafter the "Subject Design A"). This artwork was a creation of Plaintiff and/or
26 Plaintiff's design team, and is, and at all relevant times was, owned exclusively by
27 Plaintiff.

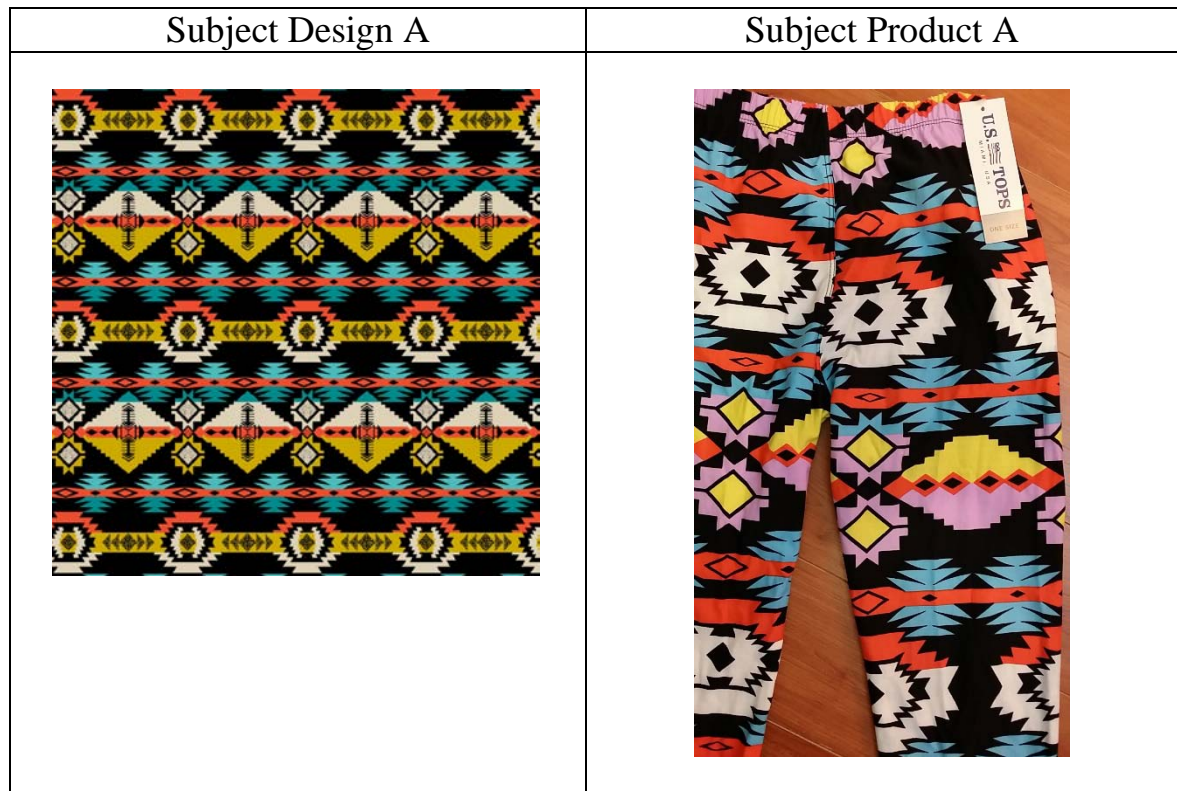
1 10. Plaintiff applied for and received a United States Copyright Registration
2 for the Subject Design.

3 11. Prior to the acts complained of herein, Plaintiff sampled and sold fabric
4 bearing Subject Design to numerous parties in the fashion and apparel industries. A
5 true and correct image of Subject Design A is presented below:

6 Subject Design A:



16 12. Plaintiff is informed and believes and thereon alleges that, following this
17 distribution of fabric bearing Subject Design A, US TOPS, J & K, CALWELL, 2
18 CUTE, and certain DOE Defendants created, sold, manufactured, caused to be
19 manufactured, imported and distributed fabric and/or garments comprised of fabric
20 bearing an unauthorized reproduction of Subject Design A (“Subject Product A”).
21 Such Subject Products include but are not limited to US TOPS garments sold under,
22 *inter alia*, SKU number 044-648. Such Subject Product A bore the “J & K” label,
23 indicating said garments were manufactured by, caused to be manufactured by, or
24 supplied by J & K or DOE Defendants. A comparison of the Subject Design A (left)
25 and the design on the Subject Product A (right) is set forth below:



13. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed copyright infringement with actual or constructive knowledge of Plaintiff's rights and/or in blatant disregard for Plaintiff's rights, such that said acts of copyright infringement were, and continue to be, willful, intentional and malicious, subjecting Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000) per infringement.

14. A comparison of the Subject Design A and the non-exclusive exemplar of Subject Product A makes apparent that the elements, composition, colors, arrangement, layout, and appearance of the designs are substantially similar.

CLAIM RELATED TO DESIGN R8898

15. Prior to the conduct complained of herein, Plaintiff composed an original two-dimensional artwork for purposes of textile printing, which is set forth hereinbelow. It allocated this artwork Plaintiff's internal design number R8898

(hereinafter the “Subject Design B”). This artwork was a creation of Plaintiff and/or Plaintiff’s design team, and is, and at all relevant times was, owned exclusively by Plaintiff.

16. Plaintiff applied for and received a United States Copyright Registration for the Subject Design B.

17. Prior to the acts complained of herein, Plaintiff sampled and sold fabric bearing Subject Design to numerous parties in the fashion and apparel industries. A true and correct image of Subject Design B is presented below:

Subject Design B:



18. Plaintiff is informed and believes and thereon alleges that, following this distribution of fabric bearing Subject Design B, US TOPS, DIVA, CALWELL, and certain DOE Defendants created, sold, manufactured, caused to be manufactured, imported and distributed fabric and/or garments comprised of fabric bearing an unauthorized reproduction of Subject Design A (“Subject Product A”). Such Subject Products include but are not limited to US TOPS garments sold under, *inter alia*, Style number CTLG114BS. Such Subject Product B bore the “Diva Apparel” label, indicating said garments were manufactured by, caused to be manufactured by, or supplied by DIVA or DOE Defendants. A comparison of the Subject Design B (left) and the design on the Subject Product B (right) is set forth below:



1 19. Plaintiff is informed and believes and thereon alleges that Defendants, and
2 each of them, have committed copyright infringement with actual or constructive
3 knowledge of Plaintiff's rights and/or in blatant disregard for Plaintiff's rights, such
4 that said acts of copyright infringement were, and continue to be, willful, intentional
5 and malicious, subjecting Defendants, and each of them, to liability for statutory
6 damages under Section 504(c)(2) of the Copyright Act in the sum of up to one
7 hundred fifty thousand dollars (\$150,000) per infringement.

8 20. A comparison of the Subject Design B and the non-exclusive exemplar of
9 Subject Product B makes apparent that the elements, composition, colors,
10 arrangement, layout, and appearance of the designs are substantially similar.

11 **FIRST CLAIM FOR RELIEF**

12 (For Copyright Infringement – Against All Defendants, and Each)

13 21. Plaintiff is informed and believes and thereon alleges that Defendants, and
14 each of them, had access to Subject Design A and Subject Design B (collectively
15 "Subject Designs"), including, without limitation, through (a) access to Plaintiff's
16 showroom and/or design library; (b) access to illegally distributed copies of the
17 Subject Designs by third-party vendors and/or DOE Defendants, including without
18 limitation international and/or overseas converters and printing mills; (c) access to
19 Plaintiff's strike-offs and samples, and (d) garments manufactured and sold to the
20 public bearing fabric lawfully printed with the Subject Designs by Plaintiff for its
21 customers.

22 22. Plaintiff is informed and believes and thereon alleges that one or more of
23 the Defendants manufactures garments and/or is a garment vendor. Plaintiff is
24 further informed and believes and thereon alleges that said Defendant(s) has an
25 ongoing business relationship with Defendant retailers, and each of them, and
26 supplied garments to said retailer, which garments infringed the Subject Designs in
27 that said garments were composed of fabric which featured unauthorized print

1 design(s) that were identical or substantially similar to the Subject Designs, or were
2 an illegal derivation or modification thereof.

3 23. Plaintiff is informed and believes and thereon alleges that Defendants, and
4 each of them, infringed Plaintiff's copyright by creating, making, and/or developing
5 directly infringing and/or derivative works from the Subject Designs and by
6 producing, distributing and/or selling garments which infringe the Subject Designs
7 through a nationwide network of retail stores, catalogues, and through on-line
8 websites.

9 24. Due to Defendants' acts of infringement, Plaintiff has suffered substantial
10 damages to its business in an amount to be established at trial.

11 25. Due to Defendants' acts of infringement, Plaintiff has suffered general and
12 special damages in an amount to be established at trial.

13 26. Due to Defendants' acts of copyright infringement as alleged herein,
14 Defendants, and each of them, have obtained direct and indirect profits they would
15 not otherwise have realized but for their infringement of the Subject Designs. As
16 such, Plaintiff is entitled to disgorgement of Defendants' profits directly and
17 indirectly attributable to Defendants' infringement of the Subject Designs in an
18 amount to be established at trial.

19 27. Plaintiff is informed and believes and thereon alleges that Defendants, and
20 each of them, have committed acts of copyright infringement, as alleged above,
21 which were willful, intentional and malicious, which further subjects Defendants,
22 and each of them, to liability for statutory damages under Section 504(c)(2) of the
23 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000) per
24 infringement. Within the time permitted by law, Plaintiff will make its election
25 between actual damages and statutory damages.

SECOND CLAIM FOR RELIEF

(For Vicarious and/or Contributory Copyright Infringement - Against All Defendants)

28. Plaintiff repeats, realleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

29. Plaintiff is informed and believes and thereon alleges that Defendants knowingly induced, participated in, aided and abetted in and profited from the illegal reproduction and subsequent sales of garments featuring the Subject Designs as alleged herein.

30. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are vicariously liable for the infringement alleged herein because they had the right and ability to supervise the infringing conduct and because they had a direct financial interest in the infringing conduct.

31. By reason of the Defendants', and each of their, acts of contributory and vicarious infringement as alleged above, Plaintiff has suffered and will continue to suffer substantial damages to its business in an amount to be established at trial, as well as additional general and special damages in an amount to be established at trial.

32. Due to Defendants', and each of their, acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of the Subject Designs. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of the Subject Designs, in an amount to be established at trial.

33. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed acts of copyright infringement, as alleged above,

1 which were willful, intentional and malicious, which further subjects Defendants,
 2 and each of them, to liability for statutory damages under Section 504(c)(2) of the
 3 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000) per
 4 infringement. Within the time permitted by law, Plaintiff will make its election
 5 between actual damages and statutory damages.

6 **PRAYER FOR RELIEF**

7 Wherefore, Plaintiff prays for judgment as follows:

8 **Against All Defendants**

9 **34. With Respect to Each Claim for Relief**

- 10 a. That Defendants, each of them, and their agents and employees be
 11 enjoined from infringing Plaintiff's copyrights in any manner,
 12 specifically those for the Subject Designs;
- 13 b. That Defendants, and each of them, account to Plaintiff for their profits
 14 and any damages sustained by Plaintiff arising from the foregoing acts
 15 of infringement, the exact sum to be proven at the time of trial, or, if
 16 elected before final judgment, statutory damages as available under the
 17 Copyright Act, 17 U.S.C. § 101 et seq.;
- 18 c. That Plaintiff be awarded its attorneys' fees as available under the
 19 Copyright Act U.S.C. § 101 et seq.;
- 20 d. That Plaintiff be awarded pre-judgment interest as allowed by law;
- 21 e. That Plaintiff be awarded the costs of this action; and
- 22 f. That Plaintiff be awarded such further legal and equitable relief as the
 23 Court deems proper.

24
 25
 26 ///

27 ///

1 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.
2 38 and the 7th Amendment to the United States Constitution.

3 Respectfully submitted,

4
5 Dated: February 10, 2015

By: /s/ Scott Alan Burroughs
Scott Alan Burroughs, Esq.
Trevor W. Barrett, Esq.
DONIGER / BURROUGHS
Attorneys for Plaintiff
ROYAL PRINTEX, INC.